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**FISCAL IMPACT STATEMENT**

**LS 7015**

**BILL NUMBER:** HB 1359

**NOTE PREPARED:** Mar 25, 2008

**BILL AMENDED:** Mar 14, 2008

**SUBJECT:** Mortgage Lending.

**FIRST AUTHOR:** Rep. Bardon

**FIRST SPONSOR:** Sen. Paul

**BILL STATUS:** Enrolled

**FUNDS AFFECTED:** X GENERAL  
X DEDICATED  
X FEDERAL

**IMPACT:** State & Local

**Summary of Legislation:** *Homeowner Protection Unit*- The bill requires the Homeowner Protection Unit (HPR) in the Attorney General's (AG) office to: (1) establish a new toll free telephone number; or (2) designate an existing toll free telephone number; to receive calls from persons having information about suspected fraudulent residential real estate transactions. The bill unless otherwise prohibited by law, requires the HPR to share information reported by callers with appropriate law enforcement and regulatory agencies not later than 15 business days after the unit determines the appropriate entity to which the information should be referred.

*Indiana Housing and Community Development Authority*- The bill allows the Indiana Housing and Community Development Authority (IHCDA) to make or participate in the making of: (1) construction loans; and (2) mortgage loans; for multiple family residential housing under terms approved by the IHCDA. The bill requires the IHCDA to ensure that a mortgage loan: (1) acquired by the IHCDA; or (2) made by a mortgage lender with funds provided by the IHCDA; may not knowingly be made to a person whose adjusted family income exceeds 125% of the median income for the geographic area involved. The bill for purposes of allocating federal low income housing credits, provides that a "qualified building" is a building that is used or will be used to provide residential housing for special needs populations. (Current law provides that a "qualified building" is a building that is used or will be used to provide residential housing for persons with disabilities.) The bill provides that the IHCDA's authority to issue bonds is subject to the approval of the public finance director. (Current law provides that the IHCDA's bonding authority is subject to governor's approval.) The bill repeals provisions concerning job and contract awarding preferences for the IHCDA's program for making or participating in the making of mortgage loans for multiple family residential housing. The bill repeals provisions concerning the articles of incorporation of sponsors, builders, or developers of multiple family residential housing.

*Loan Broker Statute Exemptions-* The bill eliminates the exemption from the loan broker statute for: (1) persons authorized to make loans on behalf of, or insured by, certain federal agencies; and (2) licensed real estate brokers and salespersons who render loan related services in a real estate transaction.

*National Criminal History Background Check-* The bill specifies that evidence of compliance with the licensing and registration requirements for loan brokers, originators, and principal managers may include a national criminal history background check by the Federal Bureau of Investigation (FBI). The bill specifies that the securities commissioner (commissioner) shall require each: (1) equitable owner of a loan brokerage business; and (2) applicant for registration as an originator or a principal manager; to submit fingerprints for a national criminal history background check by the FBI. The bill prohibits the commissioner from releasing the results of a national criminal history background check to a private entity.

*Multi-State Automated Licensing System-* The bill removes a provision in existing law allowing the commissioner to check the qualifications and background of each: (1) equitable owner of a loan brokerage business; and (2) applicant for registration as an originator or a principal manager; by accessing a multi-state automated licensing system for mortgage brokers and originators. The bill allows the commissioner to designate a multi-State automated licensing system and repository as the sole entity responsible for processing applications for: (1) licenses for loan brokers; and (2) certificates of registration for originators and principal managers.

*Loan Broker Breach of Security-* The bill specifies that a loan broker is subject to the state statute requiring disclosure of a breach of the security of any records: (1) maintained by the broker; and (2) containing the personal information of a borrower or prospective borrower. The bill prohibits loan brokers, originators, and principal managers from disposing of unencrypted, unredacted personal information with respect to borrowers or prospective borrowers without first taking certain actions to render the personal information illegible or unusable.

*Prohibited Acts with Loan Broker-* The bill prohibits a person from performing specified acts in connection with a contract for the services of a loan broker.

*DFI Regulates First Lien Mortgage Creditors-* The bill provides that: (1) first lien mortgage transactions are subject to regulation by; and (2) creditors making first lien mortgage transactions must be licensed by; the Department of Financial Institutions (DFI).

*Property Short Sales-* The bill requires a creditor, a mortgage servicer, or an agent of a creditor to acknowledge a written offer made in connection with a proposed short sale of property that is subject to a mortgage transaction that is at least 60 days delinquent. The bill provides that the acknowledgment must be provided not later than 10 business days after the date of the offer. The bill requires the creditor, servicer, or agent to accept or reject the short sale offer not later than 30 business days after receipt of the offer.

*Real Estate Appraiser Background Checks-* The bill requires the Real Estate Appraiser Licensure and Certification Board to require each initial applicant for licensure or certification as a real estate appraiser to submit fingerprints for a national criminal history background check by the FBI. The bill prohibits the Board from releasing the results of a national criminal history background check to a private entity.

*Department of Insurance-* The bill requires the Department of Insurance (DOI) to establish an electronic system for the collection and storage of the following information concerning residential mortgage transactions: (1) An identification of the property involved in the transaction. (2) The names and license,

registration, or certificate numbers of certain professionals participating in or assisting with the transaction. (3) The date on which the closing agent received the closing instructions from the creditor. (4) The date of the closing. The bill provides that the system must allow closing agents to: (1) input the required information; and (2) submit the form electronically to a data base maintained by the DOI. The bill requires the professionals involved in the transaction to submit their names and license, registration, or certificate numbers to the closing agent in the transaction not later than the time of the closing. The bill requires the DOI to make the data base accessible to: (1) the state agencies responsible for regulating the specified professionals; and (2) the HPU in the AG's office. The bill allows the DOI to adopt rules to: (1) implement the system; and (2) establish an administrative fee to cover the DOI's expenses in establishing and maintaining the system.

*Title Insurance Enforcement Fund Uses-* The bill specifies permissible uses by the DOI of funds in the Title Insurance Enforcement Fund (TIEF).

*Health Savings Account Bankruptcy Exemption-* The bill provides that, with respect to a debtor domiciled in Indiana, money in a health savings account established under the Internal Revenue Code is exempt in a bankruptcy proceeding.

*Task Force-* The bill requires various state agencies to form the Mortgage Lending and Fraud Prevention Task Force to coordinate the state's efforts to: (1) regulate the various participants involved in originating, issuing, and closing home loans; (2) enforce state laws and rules concerning mortgage lending practices and mortgage fraud; and (3) prevent fraudulent practices in the home loan industry.

*IHCDA Report to Legislative Council-* The bill requires the IHCDA to provide, not later than November 1, 2008, a report to the Legislative Council that includes the following: (1) An identification of new and existing funding sources that can be used to assist Indiana homeowners in refinancing their existing mortgage transactions, in order to prevent the foreclosure of the homes secured by the mortgages. (2) A plan for the rehabilitation of areas in Indiana that have been adversely or disproportionately affected by mortgage foreclosures.

*DFI, Securities Division Cooperation-* The bill requires the securities commissioner and the Director of the DFI to cooperate to determine the appropriate state agency or department to regulate a person subject to regulation, licensure, or registration under both: (1) the loan broker statute; and (2) the provisions of this act providing that first lien mortgage transactions are subject to regulation by the DFI.

**Effective Date:** Upon Passage; July 1, 2008; January 1, 2009.

**Explanation of State Expenditures:** *Homeowner Protection Unit (HPU)-* This provision would likely have a minimal impact on state expenditures. However, the Attorney General Consumer Protection Division already has a toll-free number. If that number were to meet the requirement of this provision, there would be no impact to the HPU. Generally, the cost of a toll-free call to a called entity is based the amount of usage of a toll-free number, the cost of the trunk lines to the entity, and possibly a monthly flat rate service charge. The Homeowner Protection Unit had approximately \$3,600 in local phone service expenditures at the end of FY 2007.

*Indiana Housing and Community Development Authority-* The IHCDA would have greater flexibility to provide certain loans under the bill.(The IHCDA already provides loans to other entities including mortgage lenders.) This bill does not provide an appropriation to the IHCDA with which to implement this provision.

Therefore, the IHCDCA would be required to meet the provision within their existing level of resources.

*Department of Insurance-* The DOI estimates the development costs of a database to be \$150,000. The bill does not provide an appropriation to fund the cost of the database, but does give the DOI the option to adopt rules establishing a service fee to cover the developmental and maintenance costs associated with the database.

*Criminal Background Checks-* Additional national criminal background checks could require an increase in administrative time for the Indiana State Police Department (SPD) to complete these investigations. The impact to SPD time and expenditures would depend on the number of additional background checks processed as a result of the bill.

*Multi State Automated Licensing System-* The impact of the Multi-State Automated Licensing System on Secretary of State expenditures will depend on the system used and the number of persons entered. The Securities Commissioner could place a reasonable processing fee on persons entered into the system. Access to a system maintained by a third party could reduce the amount of administrative time needed for the Securities Commissioner to investigate registrants. The Securities Commissioner would not be able to require a person exempt from broker licensure or registration to submit information or participate in the system.

*DFI Regulates First Lien Mortgage Creditors-* Currently, the DFI examines second mortgage lenders. Therefore, the DFI would be required to examine the holdings of first mortgage lenders including those second mortgage lenders that also make first mortgage loans. The impact of this provision on DFI expenditures and staff time is unknown as the number of potential lenders that would be regulated is unknown. The examination fees for the first mortgage lenders would be the same as other regulated lenders: \$1,000 or a volume fee set by the DFI, depending on which is applicable.

*Task Force-* The Task Force would consist of appointees from the Office of Secretary of State (Securities Division), the Attorney General (Homeowner Protection Unit), the DFI, the Department of Insurance, the Indiana Real Estate Commission, and the Professional Licensing Agency via the Real Estate Appraiser Licensure and Certification Board. The Task Force would meet monthly to coordinate the state's efforts to regulate, enforce laws, and prevent fraudulent activities with respect to home loan matters.

The Task Force would report to the Legislative Council annually on their activities for the prior year relating to coordination efforts of home loan matters. Each agency involved may require additional administrative time to produce the required reports, as well as for meetings, including preparation, by the members of the Task Force. It is likely that each participating agency would be able to complete their administrative duties for the Task Force within existing resources. This provision has an effective date of upon passage.

*IHCDA Report to Legislative Council-* The IHCDCA would likely require an increase in their workload to complete the required report. The IHCDCA should be able to complete the report within their existing level of resources.

*Loan Broker Violations-* A violation of a loan broker statute currently constitutes a Class D felony. Under current law, a violation is a Class C felony for knowingly sending false documents or making false statements to the Securities Commissioner during an examination or investigation. A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor depending upon mitigating and aggravating circumstances. Assuming offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$1,825 annually, or

\$5 daily, per prisoner. However, any additional expenditures are likely to be small. The average length of stay in Department of Correction (DOC) facilities for all Class D felony offenders is approximately ten months.

*Title Insurance Enforcement Fund Uses-* Under the bill, TIEF revenue could be expended for the additional purposes: investigations of title insurance transactions, administrative and civil actions to remedy noncompliance with insurance law, cooperative investigations with federal, state, and local law enforcement agencies; and for actions to enjoin certain federal violations.

*Background-* As of July 2, 2007, the DFI had four vacancies with \$205,000 in salary. The DFI reverted \$133,127 from their operating account at the end of FY 2007. The DFI's dedicated fund appropriation for FY 2008 is \$8.5 M.

**Explanation of State Revenues:** *Criminal Background Checks-* Persons required to submit fingerprints for a national criminal background check would be required to pay all the costs involved for the check.

*Indiana Housing and Community Development Authority-* Presumably, if the IHCDA were able to make additional loans under this provision, the IHCDA would earn additional interest on those loans. Any additional amount of interest earned is indeterminable and would depend on the amount of new loans made as a result of the provision.

*Loan Broker Statute Exemptions-* If fewer exemptions occur as a result of the bill there would be a reduction in revenue to the state. Currently, if an exemption is filed with the Securities Division, the fee for claiming an exemption is provided by statute at \$400. Recently, the Securities Commissioner had 1,091 brokers on file without a registration from the Securities Division due to statutory exemption.

*Loan Broker Penalty Provision-* If additional court cases occur and fines are collected, revenue to both the Common School Fund (from criminal fines) and the state General Fund (from court fees) would increase. The maximum fine for a Class D felony is \$10,000. However, any additional revenues would likely be small.

In addition, if the Securities Commissioner determines, after a hearing, that a person is in violation of loan broker statute they may impose a civil penalty upon the person of no more than \$10,000 for each violation.

*Closing Agent Requirements-* Under the bill, if a closing agent does not properly input residential sales information electronically into the DOI's proposed database, the agent would be subject to a civil penalty of \$25 for each violation. The civil penalties for this specific type of violation would be placed into the Home Ownership Education Account.

*Property Short Sales-* For the provisions of the bill that fall under IC 24-9 (the state's Home Loan Practice Act), a violation of the Act constitutes a Class A misdemeanor. If violations of the new short sale provision of the bill were to result in additional court cases and fines are collected, revenue to both the Common School Fund (from fines) and the state General Fund (from court fees) would increase. The maximum fine for a Class A misdemeanor is \$5,000. However, any additional revenue would likely be small.

Current law provides for civil penalties for violation of an injunction against a violator of the Home Loan Practice Act. Civil penalties cannot exceed \$10,000 per injunction violation.

*Background on Criminal Background Checks-* A national criminal history background check costs a total

of \$39, \$24 of which is given to the federal government. The remaining \$15 is deposited into the state General Fund. Last year, the SPD processed approximately 615,000 limited criminal background checks.

**Explanation of Local Expenditures:** *Loan Broker Penalty Provision-* If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. However, any additional expenditures would likely be small.

*Property Short Sales-* A Class A misdemeanor is punishable by up to one year in jail.

**Explanation of Local Revenues:** *Loan Broker Penalty Provision-* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from court fees. However, the amounts would likely be small.

**State Agencies Affected:** DFI, SPD; Department of Correction; Real Estate Appraiser's Board.

**Local Agencies Affected:** School corporations; trial courts, local law enforcement agencies.

**Information Sources:** State of Indiana, *List of Appropriations July 1, 2007, - June 30, 2009*; Indiana State Budget Agency Closeout documents; Captain Sherry Beck, SPD.

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